

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

96 JUN -6 PM 3:20

In re:

ADMINISTRATION OF CHAPTER 13
CASES - FILING CONFIRMATION
ORDERS

) Administrative Order No. 96-45
)
) Chapter 13
)
) Judge Morgenstern-Clarren
)

NORTHERN DISTRICT OF OHIO
CLEVELAND

The failure of some debtors' attorneys to timely file confirmation orders has resulted in delayed distribution to creditors and the expenditure of time and effort by the Standing Chapter 13 Trustee and the Court. Since the preparation and filing of such orders is a simple, ministerial act, there appears to be no excuse for such delay. IT IS, THEREFORE, ORDERED THAT:

1. Within 30 days after the date on which the Court confirms a Chapter 13 plan, the debtor's attorney shall file with the Court a completed confirmation order to which a copy of the confirmed plan, including modifications which have become a part of the plan, is attached. The confirmation order shall be in the standard form prescribed by the Court.

2. In the event that the confirmation order is not filed as provided in paragraph 1,

a. The Court or the Standing Chapter 13 Trustee shall prepare the confirmation order. Such confirmation order shall not provide for the allowance of fees to debtor's attorney; and

b. Fees in any such case shall be allowed only on application to the Court by the debtor's attorney. For cause, the Court may order the fees reduced by \$100 for the failure to timely file the confirmation order.

Date: 6 June 1996

Pat E. Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
96 JUN -6 PM 3:36
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:)	Administrative Order No. 96-6
)	
ADMINISTRATION OF CHAPTER 13)	Chapter 13
CASES - ALLOWANCE OF)	
ATTORNEY FEES)	Judge Pat E. Morgenstern-Clarren
)	

This policy is adopted to promote the fair and efficient administration of Chapter 13 cases, as well as to provide appropriate supervision and control of fee awards to debtors' attorneys. This policy will govern all Chapter 13 cases filed on or after June 7, 1996. Chapter 13 cases filed before that date will continue to be governed by Administrative Order No. 93-1.

1. If the total fee (including expenses other than filing fees) requested by counsel for debtors is (a) \$850 or less; or (b) \$1000 or less, and the fee arrangement provides that \$300 or less will be paid prior to the filing of the bankruptcy petition with the balance to be paid through the Chapter 13 plan, then those fees may be allowed by the Court in the Order confirming debtor's plan of reorganization based on the compensation statement signed by the attorney without additional application. Debtor's attorney shall, however, at the request of the Court or any party in interest submit a detailed fee application in accordance with the Guidelines for Compensation and Expense Reimbursement of Professionals, General Order No. 93-1, a copy of which is available in the Clerk's office.

2. If counsel seeks fees exceeding the limits set forth above, counsel shall submit a detailed fee application in accordance with the Guidelines. This requirement applies to initial fee

applications as well as to additional or supplemental applications. In the case of an additional or supplemental application, the application shall also (a) describe in detail the services provided from the beginning of the case in accordance with the Guidelines and (b) attach the debtor's authorization for allowance of those fees. Without limiting the applicability of the Guidelines, counsel's attention is directed to the requirements that such applications are to be based on time records kept contemporaneously with the activity recorded and that the individual who performed the activity must be identified by name, billing rate, activity, and amount of time expended.

Guidelines, ¶¶ 7, 9.

3. Applications made under paragraph 2 may be set for hearing at the request of the Court or any party in interest.

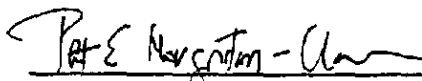
4. If counsel does not timely file the confirmation order as required by Administrative Order No. 96-5, then fees will only be allowed as provided for in that Order.

5. In accordance with the Bankruptcy Code and Rules, no attorney may, directly or indirectly, receive fees in respect of a case after the case is filed and while it is pending other than by Court Order.

6. All attorneys are strongly encouraged to enter into written fee agreements with their clients.

IT IS SO ORDERED.

Date: 6 June 1996



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
98 FEB 13 PM 3:47
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Amended Administrative Order No. 98-1
)
ADMINISTRATION OF CHAPTER 13) Chapter 13
CASES FILED IN CLEVELAND)
) Judge Randolph Baxter
) Judge David F. Snow
) Judge Pat E. Morgenstern-Clarren

In recent months, an increasing number of motions to incur new debt and to sell real estate have been filed. These motions frequently result in multiple hearings because they are not supported by adequate information at the time of filing. To promote the efficient administration of Chapter 13 cases, therefore, this Order establishes procedures to govern motions by debtors to incur new debt and motions to sell real estate.

I. Motions to Sell Real Estate

A Motion to Sell Real Estate should include:

1. The proposed contract of sale;
2. The reason for the proposed sale;
3. If the real estate is debtor's residence, an explanation of where debtor intends to reside following the sale;
4. A statement as to any connection between debtor and the proposed buyer, or an affirmative representation that there is no such connection;
5. A Settlement Statement or Disbursement Schedule detailing the proposed disposition of funds.
6. If the proposed sale price is greater than the value of the real estate as listed in debtor's schedules, an explanation of the discrepancy.

II. Motions to Incur New Debt

A. A Motion to Buy Real Estate should include:

1. The proposed purchase contract;
2. The Truth-in-Lending Disclosure Statement;
3. The Good Faith Estimate of Closing Costs;
4. A statement of the basic terms: i.e., amount to be borrowed, number of years, down payment (including the source of the funds), interest rate, and points to be paid;
5. The reason for the proposed purchase;
6. A comparison of debtor's existing housing costs to the anticipated new housing costs, including a utility and insurance analysis. If the proposed new housing cost is:
 - (a) higher than debtor's existing housing cost: an explanation of how debtor intends to handle the additional cost;
 - (b) lower than debtor's existing housing cost: an explanation of how debtor intends to apply the additional disposable income.
7. A statement as to any connection between debtor and the proposed seller, or an affirmative representation that there is no such connection.

An Amended Budget should also be filed in support of the Motion, if applicable.

B. A Motion to Refinance Real Estate should include:

1. The proposed contract;
2. The Truth-in-Lending Disclosure Statement;
3. The Good Faith Estimate of Closing Costs;
4. A statement of the basic terms: i.e., amount to be borrowed, number of years, interest rate, and points to be paid;

5. The reason for the proposed refinancing;
6. A Settlement Statement or Disbursement Schedule detailing how the funds sought to be borrowed will be distributed;
7. A comparison of debtor's existing mortgage costs to the anticipated new costs. If the anticipated new cost is:
 - (a) higher than debtor's existing cost: an explanation of how debtor intends to cover the additional cost;
 - (b) lower than debtor's existing cost: an explanation of how debtor intends to apply the additional disposable income;
8. A statement as to any connection between debtor and the lender, or an affirmative representation that there is no such connection;
9. If the refinancing includes amounts for repair to the real estate, a detailed statement of each such repair and the estimated cost of the repair, including debtor's basis for arriving at that estimated cost.

An Amended Budget should be filed in support of the Motion, if applicable.

C. A Motion to Lease/Purchase a Vehicle should include:

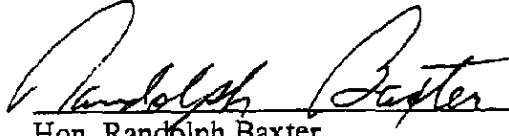
1. The proposed contract;
2. A statement of the basic terms: i.e., amount to be borrowed, loan/lease term, down payment (including source of the funds), and interest rate;
3. The reason for the proposed lease/purchase;
4. A comparison of debtor's existing transportation costs to the anticipated new costs. If the anticipated new cost is:
 - (a) higher than debtor's existing cost: an explanation of how debtor intends to cover the additional cost;
 - (b) lower than debtor's existing cost: an explanation of how debtor intends to apply the additional disposable income;

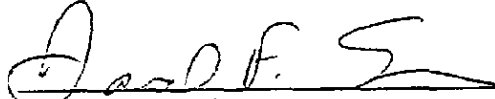
5. A statement as to any connection between debtor and the lender/lessor, or an affirmative representation that there is no such connection.

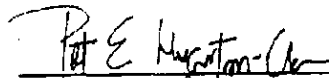
An Amended Budget should be filed in support of the Motion, if appropriate.

IT IS SO ORDERED.

Date: 13 Feb 1998


Hon. Randolph Baxter


Hon. David F. Snow


Hon. Pat E. Morgenstern-Clarren

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:)	Administrative Order No. 98-2
)	
ADMINISTRATION OF BANKRUPTCY)	Judge Randolph Baxter
CASES FILED IN CLEVELAND:)	Judge David F. Snow
NUMBER OF COPIES OF DOCUMENTS)	Judge Pat E. Morgenstern-Clarren
TO BE FILED)	

To expedite consideration and disposition of proceedings , these filing requirements shall apply as of the date on which this Order is entered:

A. Chapter 13 Cases (not including Adversary Proceedings)

1. The petition, schedules, and statements shall be filed as an original plus three copies (Local Bankruptcy Rule 1007-1).
2. *Proofs of claim shall be filed as an original plus one copy.*
3. All other documents shall be filed as an original plus two copies.

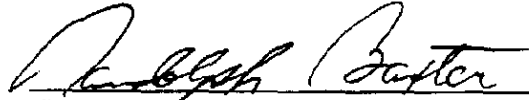
B. Chapters 7, 11, and 12 (and Chapter 13 Adversary Proceedings)


1. Pre-Trial Statements and Trial/Hearing Briefs shall be filed as an original plus two copies.
2. Witness Lists and Exhibit Lists shall be filed as an original plus three copies.
3. Three copies of Exhibits shall be provided to chambers (but not filed). Of these, one will be for the judge, one for the law clerk, and one for witnesses.

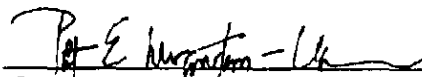
4. All other documents shall be filed as an original plus one copy.

IT IS SO ORDERED.

Date: 19 Nov 1998


Hon. Randolph Baxter


Hon. David F. Snow


Hon. Pat E. Morgenstern-Clarren

MEMORANDUM

TO: All Chapter 13 Practitioners

FROM: Judge Pat E. Morgenstern-Clarren *PEM*

DATE: August 26, 1997

RE: Dismissals for Lack of Funding at Confirmation

The funding of a Chapter 13 plan, whether by wage order or self-pay, is the linchpin of any Chapter 13 case. In addition to being advised by their own counsel about the importance of making payments to the Chapter 13 Trustee on time and in full, debtors are reminded of this obligation at the 11 U.S.C. § 341 Meeting of Creditors. Also, the standard wage order to employers and the self-pay orders (both of which are sent to debtors) remind debtors that the payments must be made. Despite this, an increasing number of cases are coming on for confirmation hearing with the debtor not having made the plan payments in full to the Chapter 13 Trustee.

In light of the above, this is to provide additional notice that debtors are expected to be current in their funding to the Chapter 13 Trustee's office as of the confirmation hearing. **If the funding is not current, debtors should anticipate that their case will be dismissed at the confirmation hearing, without further adjournment to attempt to remedy the funding problem.** The Court will continue to follow the policy that timely motions to reinstate may be filed as set forth in the Court's memorandum of July 16, 1996, copies of which are available from the Clerk's office.

Information is readily available from the office of the Chapter 13 Trustee as to whether a debtor is fully funding his or her obligations. Counsel are urged to check with the Trustee's office well before the confirmation hearing date to identify and correct any funding problems. If counsel believes that the Trustee's information is inaccurate, counsel should be prepared **at the confirmation hearing** to present evidence of payment, in the form of copies of the checks, money orders etc. or copies of pay stubs showing that all payments have been deducted by the employer.

Your cooperation on this issue is appreciated.

MEMORANDUM

TO: All Chapter 13 Practitioners

FROM: Judge Pat E. Morgenstern-Clarren and Yvonne Wood, Deputy Clerk in Charge of the Cleveland Office

DATE: January 13, 1997

RE: Processing of Orders in Chapter 13 cases

As you know, there are many occasions where counsel submits a proposed order to the court following a hearing or based on an uncontested motion. The goal of the Clerk's office is to process these orders promptly, but at times the proposed orders are returned to counsel because they do not reflect the relief granted on the docket or they do not conform to standard procedures. In light of questions which have been raised on this issue, we thought it would be helpful, particularly for practitioners whose Chapter 13 practice is sporadic, to identify a few of the more common situations where proposed orders are sent back for revisions:

1. Confirmation Orders with Incorrect Attachments

The standard confirmation order should have attached to it whatever version of the plan was confirmed so that the order, read as a whole, accurately informs the reader as to the terms of the confirmed plan. When confirmation orders are returned, it is generally because the attachment does not match the confirmation docket entry. For example:

a. If the docket entry reads "plan confirmed as interlineated", the attachment should be the plan with the handwritten changes as agreed to either in court or at the 341 meeting of creditors. (Please do not re-type the plan to incorporate the handwritten changes because the case administrators have no way of telling whether the re-typed version accurately reflects the interlineation agreed to by the parties.)

b. If a motion to modify is granted, the attachment should be the modified plan. If a motion to modify is granted as interlineated in court, the copy with interlineations is the correct attachment.

2. Agreed Orders

If the docket entry reads "resolved by agreed order", then the proposed order should be signed by all parties affected by the order. These orders sometimes come in with just one signature and blanks where the other parties were to sign.

3. Timing of Submitting Orders

Agreed orders may be submitted at any time. Other orders should be delivered to the Clerk's office only after the scheduled hearing date because the case administrator does not know until then whether the proposed order accurately reflects the relief granted.

4. Orders that are Submitted without Service Copies and Envelopes

The long-standing practice in the Clerk's office is to require counsel submitting a proposed order to include the original *plus* a sufficient number of service copies and service envelopes that are addressed and stamped. Orders without these copies and envelopes are returned.

5. Orders on the Debtor or Debtor's Employer to Make Plan Payments

Plans are funded either through wage orders placed on employers or by direct payment from the debtor. A standard form order, available from the Clerk's office, must be used for each of these alternatives.

If the debtor requests permission to make plan payments directly to the Trustee, rather than through a wage order on an employer, a letter explaining the circumstances necessitating direct pay should be submitted together with the proposed self-pay order. Self-pay orders without such a letter are returned to counsel. The certificate of service on a self-pay order should be to debtor, debtor's counsel and the Chapter 13 Trustee.

6. Miscellaneous

a. Please verify that the debtor's name, the judge assigned to the case, and the case number are all listed accurately.

b. Please double-check that the order contains the appropriate terminology. Generally, motions are "granted" or "denied" while objections are "sustained" or "overruled." A number of proposed orders just say that a motion or objection is "well-taken", without including a ruling.

* * *

We hope that these words of explanation will make the order process go more smoothly for all concerned. If you have any questions, please feel free to contact the case administrator assigned to your case or Peggy Majoros, Courtroom Deputy.

MEMORANDUM

TO: All Chapter 13 Practitioners

FROM: Judge Morgenstern-Clarren

DATE: October 28, 1996

RE: Orders on Uncontested Objections to Claims/Timely Submission of Orders

1. Objections to claims are often resolved without a hearing when the objection includes a clause to the effect that the objection may be granted without hearing unless a written response is filed and served within seven days of the hearing date. Orders sustaining these objections are in essence default judgments because they are granted without the presentation of evidence. A problem has arisen with counsel submitting proposed orders that contain factual findings in favor of the objecting party; those orders are not appropriate if an evidentiary hearing is not held. To assist counsel in submitting orders that are likely to be approved without modification, a model order for use under the circumstances described is attached. The model is similar to that currently in use when motions to lift stay are granted without a hearing and should be equally easy to use.

Any lawyer who would prefer to have an order resolving an objection on the merits should feel free to request an evidentiary hearing.

2. All proposed orders reflecting relief granted on a Chapter 13 docket should be submitted no later than the Tuesday following the docket. This applies to relief granted by default, by agreement or from the bench. Your cooperation in submitting these on a timely basis will reduce the amount of time spent by the Clerk's office and the office of the Chapter 13 Trustee in tracking down missing orders. Ultimately, it is to everyone's advantage to have a timely, complete record that accurately reflects the case status.

Thank you.

MEMORANDUM

TO: All Chapter 13 Practitioners

FROM: Judge Pat E. Morgenstern-Clarren

DATE: July 16, 1996

RE: Motions to Incur New Debt/Sell Real Estate; Affidavits of Default; Motions to Reinstate

This memo is to provide additional guidance on procedures relating to three recurring issues:

1. **Motions to Incur New Debt/Sell Real Estate.** To facilitate review and approval, these motions should include at least this information: a copy of the proposed contract, the reason why the action is proposed, a comparison of the existing cost to the debtor compared to the new cost, an explanation of how any additional cost will be covered by the debtor, and the proposed disposition of the funds.

2. **Affidavits of Default lifting the Automatic Stay.** The long-standing practice in this Court has been to permit the parties to enter into agreements, following debtor's failure to maintain payments to secured creditors and the filing of a motion to lift the automatic stay, to keep the stay in place so long as payments are brought current and maintained. If the debtor defaults, the creditor then has the right to lift the stay by filing an affidavit of default. There is a small but steady problem with affidavits of default being filed by creditors based on incorrect information; this results in both parties incurring additional costs to remedy the situation. To reduce the possibility of incorrect affidavits being filed, all such affidavits should (a) identify the

dates of the missing payments, rather than simply stating that the debtor is in default, and (b) be signed by the creditor who has reviewed the records and made the default determination, rather than being signed by the creditor's lawyer who does not have personal knowledge.

3. **Motions to Reinstate.** Motions to reinstate dismissed cases have become increasingly frequent and in some instances have been abused, imposing an unjustified burden on the *Chapter 13 Trustee, the Court and creditors*. In order to curb these abuses, the following procedures will apply to motions to reinstate Chapter 13 cases:

a. By the time of the hearing on the motion, the debtor must establish that funds are on hand to cure payment defaults and that appropriate actions have been instituted to cure any other condition which led to dismissal. Any such motion failing to meet these criteria may be denied with prejudice.

b. Motions which meet the stated criteria and are filed within 30 days after entry of the dismissal order will ordinarily be granted absent an objection. Motions to reinstate for the purpose of conversion to Chapter 7 filed within such 30-day period and noticed with an appropriate objection clause and served as required by law will be granted without an actual hearing if no objection is filed. Such motions should include the debtor's notice of conversion under § 1307 of the Bankruptcy Code. Motions to reinstate filed more than 30 days after entry of the dismissal order must state specifically the grounds for modifying or revoking the dismissal order under Bankruptcy Rule 9024 (F.R. Civ. P. 60(b)).